

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

**UNITED STATES OF AMERICA,**

Plaintiff,

**HONORABLE SHALINA KUMAR**

v.

**No. 21-20184**

**MICHAEL FRALEY, JR.,**

Defendant.

\_\_\_\_\_ /

**ARRAIGNMENT & PLEA HEARING**

**Tuesday, September 20, 2022**

Appearances:

**On behalf of Plaintiff**

Blaine Longsworth  
600 S. Church St.-Ste 210  
Flint, MI 48502  
810-766-5031  
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**On behalf of Defendant**

Henry Scharg  
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- - -

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1 Flint, Michigan

2 Tuesday, September 20, 2022

3 2:55 p.m.

4 - - -

5 **CASE MANAGER:** The United States District Court for  
6 the Eastern District of Michigan is now in session, the  
7 Honorable Shalina Kumar, United States District Judge,  
8 presiding.

9 Please be seated.

10 The Court will now hear criminal case number  
11 21-CR-20184-1, the United States of America versus Michael  
12 Fraley, Jr.

13 Would counsel please place your appearances on the  
14 record, beginning with the Government.

15 **MR. LONGSWORTH:** Good afternoon, your Honor. Blaine  
16 Longsworth, appearing on behalf of the United States.

17 **MR. SCHARG:** Good afternoon, your Honor. Henry  
18 Scharg appearing on behalf of Mr. Fraley.

19 **THE COURT:** Good afternoon. We need to start with an  
20 arraignment on the information, correct?

21 **MR. SCHARG:** That's correct.

22 **THE COURT:** Please swear the Defendant.

23 **CASE MANAGER:** Raise your right hand, please.

24 Do you solemnly swear or affirm that the testimony  
25 you're about to give in this matter is the truth, the whole

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1 truth, and nothing but the truth, so help you God?

2 **THE DEFENDANT:** Yes, I do.

3 **THE COURT:** Thank you. You can sit down if you want.

4 **THE DEFENDANT:** Thank you.

5 **THE COURT:** Sir, can you please state your full name.

6 **THE DEFENDANT:** Michael Fraley, Jr.

7 **THE COURT:** Mr. Fraley, you're here today because the  
8 U.S. Attorney sitting in this district has filed an information  
9 charging you with Count 1, possession with intent to distribute  
10 five or more grams of methamphetamine. Do you understand that?

11 **THE DEFENDANT:** I do.

12 **THE COURT:** That's in violation of 21 U.S.C. Section  
13 841(a)(1), 841(b)(1)(B)(viii).

14 And you received a copy of that information?

15 **THE DEFENDANT:** I did, your Honor.

16 **THE COURT:** And you have the right to have the United  
17 States Attorney present this matter to a grand jury and seek a  
18 return of an indictment.

19 Mr. Scharg, I do have a copy of the waiver of that  
20 indictment. Will you please place on the record what you did  
21 as relates to your client receiving this and signing this  
22 document?

23 **MR. SCHARG:** Yes, your Honor. I met with my client a  
24 number of times. We met this afternoon in the marshal's lockup  
25 area. I presented Mr. Fraley with a copy of the information

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1 and explained to him, as you said, his rights to proceed by  
2 indictment or waive indictment and proceed by information, and  
3 he signed a form where he agreed to waive indictment and  
4 proceed by information on this one-count information, and we  
5 also went over the acknowledgment of the information,  
6 indicating that the mandatory minimum -- there's a mandatory  
7 minimum sentence of 5 years and a maximum of 40 years. He  
8 acknowledged that form and signed it, along with myself.

9           **THE COURT:** Thank you. All right. And I'm going to  
10 find Mr. Fraley has knowingly and competently waived his right  
11 to an indictment.

12           Mr. Fraley, the purpose of the hearing today, the  
13 first thing is to advise you of the substance of the charge  
14 contained in the information, the potential penalties the  
15 charge carries, and advise you of some of your constitutional  
16 rights, and, as your counsel has just stated, Count 1,  
17 possession with intent to distribute five kilograms of  
18 methamphetamine, carries a maximum penalty of 40 years, minimum  
19 of 5 years, followed by a term of supervised release of at  
20 least 4 years, and a fine of not more than \$5 million.

21           Do you understand that?

22           **THE DEFENDANT:** I do, your Honor.

23           **THE COURT:** Okay. And you have a right to make a  
24 statement, not to make a statement. Any statement that you do  
25 make may be used against you, and do you understand your right

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1 to your silence?

2 **THE DEFENDANT:** I do, your Honor.

3 **THE COURT:** Okay. You also have a constitutional  
4 right to be represented by an attorney. You do have a  
5 court-appointed attorney today, Mr. Scharg.

6 **THE DEFENDANT:** Yes, I do.

7 **THE COURT:** And you don't wish to retain your own  
8 counsel?

9 **THE DEFENDANT:** No, ma'am.

10 **THE COURT:** You want to remain with Mr. Scharg  
11 representing you?

12 **THE DEFENDANT:** Yes, ma'am.

13 **THE COURT:** Okay. You understand that, at any point,  
14 you have a right to retain your own counsel if you wish. It's  
15 been determined that you cannot afford an attorney of your own,  
16 and that's how Mr. Scharg has been appointed. He's a wonderful  
17 attorney and I'm sure you will work well with him, but if, at  
18 any point, you have the funds and decide you want to retain  
19 your own counsel, just let me know, okay?

20 **THE DEFENDANT:** Yes, ma'am.

21 **THE COURT:** And turning to the information, as stated  
22 already, the charge in Count 1 of the information is possession  
23 with intent to distribute five or more grams of methamphetamine  
24 in violation of 18 United States Section 841(a)(1) and  
25 841(b)(1)(B)(viii), and regarding the penalties, I do have your

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1 acknowledgment of that information and here's your signature as  
2 well as that of Mr. Scharg's.

3 Mr. Scharg, are you prepared to enter a plea on  
4 behalf of your client at this point as to the information  
5 before we move forward?

6 **MR. SCHARG:** Yes, your Honor. For purposes of the  
7 arraignment, we will waive formal reading of the information,  
8 stand mute and ask the Court to enter a plea of not guilty.

9 **THE COURT:** Okay. A plea of not guilty on the charge  
10 in the information will be entered, and the record will reflect  
11 the Defendant has been arraigned on the information.

12 And then, Mr. Scharg, are we moving to do something  
13 else today?

14 **MR. SCHARG:** Pardon me?

15 **THE COURT:** Are we going to change the plea today?

16 **MR. SCHARG:** Yes, your Honor. That was a formality.

17 At this juncture, we have signed and executed a  
18 Rule 11 Plea Agreement and ask the Court proceed with a change  
19 of plea hearing in this matter.

20 **THE COURT:** Okay. So, Mr. Fraley, you understand at  
21 this point, your attorney has stated that you will be changing  
22 your plea to that of guilty of Count 1 of the information; is  
23 that correct?

24 **THE DEFENDANT:** Yes, ma'am.

25 **THE COURT:** Okay. I did receive the Rule~11 Plea

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1 Agreement that is signed by you, Mr. Fraley, and we're going to  
2 go over that in a few minutes.

3 So did you have an opportunity to review that plea  
4 agreement and to counsel with your attorney?

5 **THE DEFENDANT:** Yes, ma'am.

6 **THE COURT:** And do you understand that agreement?

7 **THE DEFENDANT:** I do.

8 **THE COURT:** All right. Mr. Scharg, are you satisfied  
9 that the Defendant understands the agreement?

10 **MR. SCHARG:** Yes, your Honor.

11 **THE COURT:** And has -- I'm sorry.

12 **MR. SCHARG:** I will say that I met with Mr. Fraley  
13 Friday at the Clare County Jail in Harrison, Michigan. We went  
14 over the plea agreement at that time, and there was several  
15 minor changes to that agreement, and, earlier today, I met with  
16 Mr. Fraley in the lockup area and went over the documents with  
17 him, including the plea, the Rule~11 Plea Agreement.

18 **THE COURT:** Okay.

19 **MR. SCHARG:** He indicated to me that he wished to  
20 sign that agreement and proceed with a change of plea.

21 **THE COURT:** Okay. And that agreement is the basis on  
22 which he intends to plead guilty here today?

23 **MR. SCHARG:** Yes, your Honor.

24 **THE COURT:** Okay. Mr. Fraley, I'm going to explain  
25 briefly what's going to happen at today's hearing. We're



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1 having this hearing so I can decide whether to accept your  
2 guilty plea on that charge. I'm going to you ask you some  
3 background questions at first -- sorry, this is very loud, I'm  
4 new to this courtroom. I was in a different courtroom before  
5 and I'm getting used to things.

6 Okay. I'm going to start asking you some background  
7 questions first, okay, Mr. Fraley?

8 **THE DEFENDANT:** Okay.

9 **THE COURT:** You've already placed under oath, and so  
10 any answers you give may later be used against you in a  
11 prosecution for perjury or giving a false statement if anything  
12 you say to me is not true and accurate; do you understand that?

13 **THE DEFENDANT:** I do, your Honor.

14 **THE COURT:** Okay. So let's start what's your full  
15 name?

16 **THE DEFENDANT:** Michael Fraley, Jr.

17 **THE COURT:** Where were you born, sir?

18 **THE DEFENDANT:** Flint, Michigan.

19 **THE COURT:** Are you a United States citizen?

20 **THE DEFENDANT:** I am.

21 **THE COURT:** How old are you?

22 **THE DEFENDANT:** Forty-one.

23 **THE COURT:** And how much school did you complete?

24 **THE DEFENDANT:** Eighth grade.

25 **THE COURT:** Okay. Did you do anything further, get

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1 your GED or do any other schooling?

2           **THE DEFENDANT:** I'm working on that right now. I  
3 passed two parts. I need math and science. So I'm on the way.

4           **THE COURT:** Okay. Very good. Do you read, write,  
5 and understand the English language?

6           **THE DEFENDANT:** Yeah, I do.

7           **THE COURT:** Have you been treated for any mental  
8 illness or addiction to narcotic drugs of any kind?

9           **THE DEFENDANT:** No. No, I have not.

10          **THE COURT:** Okay. Are you currently under the  
11 influence of any drug, medication, or alcoholic beverage of any  
12 kind?

13          **THE DEFENDANT:** No, your Honor.

14          **THE COURT:** In the last three days, have you taken  
15 any drug, medication or alcohol that might now affect your  
16 ability to understand what people are saying?

17          **THE DEFENDANT:** No.

18          **THE COURT:** Or interfere with your judgment or  
19 ability to make decisions?

20          **THE DEFENDANT:** No.

21          **THE COURT:** And do you have any mental condition or  
22 disability that would prevent you from fully understanding the  
23 charges against you or the consequences of pleading guilty?

24          **THE DEFENDANT:** No.

25          **THE COURT:** Is there any reason we should not go

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1 forward today?

2 **THE DEFENDANT:** I don't see why there's not.

3 **THE COURT:** Okay. Mr. Scharg, you talked to your  
4 client about these proceedings?

5 **MR. SCHARG:** Yes, your Honor.

6 **THE COURT:** Do you have any reason to believe he  
7 should not go forward with this plea today?

8 **MR. SCHARG:** No, your Honor.

9 **THE COURT:** Do you believe the Defendant is in  
10 possession of his faculties and competent to proceed?

11 **MR. SCHARG:** Yes, your Honor.

12 **THE COURT:** Mr. Longworth, do you have any reason to  
13 believe the Defendant is not competent to proceed?

14 **MR. LONGSWORTH:** No reason, your Honor.

15 **THE COURT:** All right. Thank you. Based on the  
16 statements of the Defendant and both counsel, as well as my own  
17 observations, I find the Defendant is in full possession of his  
18 faculties and is competent to proceed.

19 Mr. Fraley, have you received a copy of the  
20 information that includes the charge made against you?

21 **THE DEFENDANT:** I have, your Honor.

22 **THE COURT:** Have you fully discussed that charge with  
23 your attorney?

24 **THE DEFENDANT:** Yes.

25 **THE COURT:** Are you fully satisfied with his counsel,

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1 representation, and advice given to you in this case?

2 **THE DEFENDANT:** Yes.

3 **THE COURT:** Has anyone made any promise or assurances  
4 to persuade you to plead guilty?

5 **THE DEFENDANT:** No.

6 **THE COURT:** Has anyone forced or threatened you in  
7 any way to persuade you to plead guilty?

8 **THE DEFENDANT:** No, your Honor.

9 **THE COURT:** Mr. Scharg, were all formal plea offers  
10 by the Government conveyed to the Defendant?

11 **MR. SCHARG:** Pardon me, your Honor?

12 **THE COURT:** Were all formal plea offers --

13 **MR. SCHARG:** Yes.

14 **THE COURT:** And Mr. Fraley, are you pleading guilty  
15 of your own free will because you're guilty of the crime you  
16 are accused of committing?

17 **THE DEFENDANT:** Yes, your Honor.

18 **THE COURT:** And are the answers you are giving today  
19 not merely answers you were told to give by your attorney but  
20 are your own answers?

21 **THE DEFENDANT:** The truth, yes, your Honor.

22 **THE COURT:** Do you understand if I accept your guilty  
23 plea, you will have been convicted of a felony just as if were  
24 you tried by a jury and convicted?

25 **THE DEFENDANT:** Yes.

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1           **THE COURT:** And do you understand if I accept your  
2 guilty plea, you'll be deprived of certain valuable civil  
3 rights, which is the right to vote, the right to hold public  
4 office, the right to serve on a jury, and the right to possess  
5 firearms?

6           **THE DEFENDANT:** Yes, your Honor.

7           **THE COURT:** And do you understand if I accept your  
8 guilty plea, you'll be waiving certain other rights, including  
9 the right to plead not guilty to any offense charged against  
10 you and persist in that plea, the right to a trial by jury, the  
11 right to be presumed innocent until proven otherwise, the right  
12 to have the Government prove guilt beyond a reasonable doubt,  
13 the right to be represented by counsel, and, if necessary, have  
14 the Court appoint counsel for you at trial and every other  
15 stage of this proceeding, the right at trial to have witnesses  
16 appear against you and have them cross examined, the right to  
17 have the Court order any defense witnesses to appear during the  
18 trial, the right to testify and present evidence at your trial  
19 or to decline to testify if you so choose, the right not to  
20 have your silence used against you.

21           Do you understand all of those rights?

22           **THE DEFENDANT:** Yes, I do, your Honor.

23           **THE COURT:** Do you wish to waive those rights at this  
24 time?

25           **THE DEFENDANT:** Yes.

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1           **THE COURT:** All right. I understand that you said  
2 that you were a United States citizen, but just to inform you  
3 if you are not a United States citizen, this plea could subject  
4 you to deportation.

5           **THE DEFENDANT:** Correct.

6           **THE COURT:** Mr. Longworth, could you please go over  
7 the Rule~11 Agreement?

8           **MR. LONGSWORTH:** Yes, your Honor.

9           The Defendant will plead guilty to Count 1 of the  
10 information, which charges him with possessing with intent to  
11 distribute five grames or more of methamphetamine under 21  
12 United States Code Sections 841(a) and 841(b) (1) (B) (viii).

13           The penalties are set forth in the Rule~11 Agreement  
14 are the same as the Court articulated earlier in this hearing.  
15 If the Court accepts this agreement and imposes a sentence  
16 consistent with its terms, the United States Attorney's office  
17 will move to dismiss any remaining charges in the first  
18 superseding indictment. Those are, specifically, Counts 1 and  
19 3 of the first superseding indictment.

20           With respect to the elements of the offense, there  
21 are two: First, that the Defendant possessed with intent to  
22 distribute five grams or more of actual methamphetamine, a  
23 Schedule~II controlled substance; and, second, that the  
24 Defendant did so knowingly or intentionally.

25           The Defendant agrees to the factual basis as true and

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1 correct and provides a valid basis for the Court to accept his  
2 guilty plea.

3 With respect to the guidelines, your Honor, the  
4 Government is recommending a three-level reduction for  
5 acceptance of responsibility.

6 In addition, there are two other recommendations.  
7 One is that Defendant was on parole at the time of the offense,  
8 and, two, that the Defendant's criminal history category is  
9 level or category VI.

10 With respect to the Defendant's sentence, the  
11 Government is recommending that the sentence of imprisonment  
12 not exceed the top of the Defendant's guideline range as  
13 determined by the Court. The Defendant understands that he has  
14 no right to withdraw from this agreement or withdraw his guilty  
15 plea if the Court decides not to follow the Government's  
16 recommendation.

17 There is a recommendation of four years of -- a  
18 four-year-term of supervised release to follow any term of  
19 incarceration and, again, he has no right to withdraw from this  
20 plea agreement or to withdraw his guilty plea if the Court  
21 decides not to follow the Government's recommendation.

22 There is an appeal waiver where the Defendant waives  
23 any right he may have to appeal his conviction on any grounds,  
24 and if his sentence of imprisonment does not exceed the top of  
25 the guideline range as determined by Court, he also waives any

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1 right he may have to appeal his sentence on any grounds.

2 Finally, there's a collateral review waiver where he  
3 retains the right to raise claims alleging ineffective  
4 assistance of counsel or prosecutorial misconduct as long as he  
5 properly raises those claims under 28 United States Code  
6 Section 2255, but he also waives any other right he may have to  
7 challenge his conviction or sentence by collateral review,  
8 including, but not limited to the right he may have to  
9 challenge his conviction and sentence on any grounds under 28  
10 United States Code Section 2255.

11 Those are the material provisions of the agreement.

12 **THE COURT:** Thank you. Mr. Scharg, is that all  
13 accurate?

14 **MR. SCHARG:** Yes, your Honor.

15 **THE COURT:** Okay. Mr. Fraley, you understand the  
16 possible consequences of your plea that were just listed?

17 **THE DEFENDANT:** I do, your Honor.

18 **THE COURT:** Sir, are you currently on probation or  
19 parole for any other offense?

20 **THE DEFENDANT:** No, your Honor.

21 **THE COURT:** In terms of what your sentence will be,  
22 it will be determined by applying the factors in the federal  
23 sentencing statute, 18 U.S.C. 3553(a). Those factors include  
24 the nature and circumstances of the offense, promoting respect  
25 for the law, protecting the public, the history and



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1 characteristics of the Defendant, and the range of available  
2 sentences. Another relevant factor is the sentencing range  
3 pursuant to the United States Sentencing Commission Guidelines.

4 Mr. Fraley, have you and your attorney talked about  
5 how the United States Sentencing Guidelines might apply to your  
6 case?

7 **THE DEFENDANT:** We have.

8 **THE COURT:** And do you understand that those  
9 guidelines are advisory only?

10 **THE DEFENDANT:** Yes, yep.

11 **THE COURT:** And I will consider all the information  
12 in the presentence report, including the guideline calculation  
13 and your background. Judges may often give defendants a  
14 sentence that is within the range calculated by the federal  
15 sentencing guidelines, however, the judge does not have to  
16 follow the guideline range sentence. I can legally impose a  
17 sentence that is either above or below the guideline  
18 recommended sentence range, but I cannot sentence you to any  
19 term that is higher than the statutory maximum, which, again,  
20 there's a minimum of 5 years and a maximum of 40 years for this  
21 count, and the Court will make a final determination what your  
22 sentence will be.

23 **THE DEFENDANT:** Okay.

24 **THE COURT:** Do you understand that if you are  
25 sentenced to prison, you will not be released on parole?

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1                   **THE DEFENDANT:** Okay.

2                   **THE COURT:** Okay. Having gone over your rights and  
3 the charge and the elements the Government would have to prove,  
4 how do you plead to the charge of possession with intent to  
5 distribute five or more grams of methamphetamine?

6                   **THE DEFENDANT:** I plead guilty, your Honor.

7                   **THE COURT:** Okay. Mr. Scharg, could you please  
8 question as to the factual basis.

9                   **MR. SCHARG:** Yes. Thank you, your Honor.

10                  Mr. Fraley, on or about March 24th, 2020 in the  
11 Eastern District of Michigan, Flint -- city of Flint, Genesee  
12 County, did you knowingly possess about 12 grams of  
13 methamphetamine with the intent to distribute or give it to  
14 others?

15                  **THE DEFENDANT:** I did, your Honor -- I did.

16                  **MR. SCHARG:** I believe that satisfies the elements.

17                  **THE COURT:** Thank you. Mr. Longsworth?

18                  **MR. LONGSWORTH:** I'm satisfied, your Honor.

19                  **THE COURT:** All right. Counsel, has the Court  
20 complied with the requirements of Rule 11 of the Federal Rules  
21 of Criminal Procedure?

22                  **MR. LONGSWORTH:** Yes, your Honor.

23                  **MR. SCHARG:** Yes, your Honor.

24                  **THE COURT:** All right. The Court is satisfied with  
25 the Defendant's responses as given. Therefore, it is the

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1 finding of the Court in the case of the United States versus  
2 Michael Fraley, Jr., the Defendant is fully competent and  
3 capable of entering an informed plea. The Defendant is aware  
4 of the nature and charges and the consequences of the plea.  
5 The plea of guilty is knowing and voluntary, a knowing and  
6 voluntary plea supported by an independent basis of fact  
7 containing each of the essential elements of that offense.

8 The plea is, therefore, accepted, and the Defendant  
9 is now adjudged guilty of that offense.

10 I will take the Rule~11 Agreement under advisement.

11 This case is referred to the probation department for  
12 a presentence report and the Defendant is asked to cooperate  
13 with the probation department consistent with counsel's advice.  
14 The parties will have an opportunity to object to any  
15 inaccuracies or disagreements that they have to the presentence  
16 report, and sentencing in this case is set for January 26, 2023  
17 at 11:00 a.m. Mr. Fraley must appear for sentencing on that  
18 date.

19 Anything else for the record, counsel?

20 **MR. LONGSWORTH:** Nothing further, your Honor.

21 **MR. SCHARG:** No, your Honor.

22 **THE COURT:** Okay. Thank you.

23 **CASE MANAGER:** All rise. Court is adjourned.

24 (Proceedings concluded 3:13 p.m.)

25 - - -

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**C E R T I F I C A T I O N**

I, Andrea E. Wabeke, official court reporter for the United States District Court, Eastern District of Michigan, Southern Division, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings in the above-entitled cause on the date hereinbefore set forth. I do further certify that the foregoing transcript has been prepared by me or under my direction.

/s/Andrea E. Wabeke

February 21, 2023

Official Court Reporter  
RMR, CRR, CSR

Date

- - -